

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: SEARS HOLDINGS CORPORATION, <i>et al.</i> , Debtors.	Chapter 11 Case No. 18-23538 (RDD) Jointly Administered
SEARS HOLDINGS CORPORATION, <i>et al.</i> , Plaintiffs, -against- EDWARD SCOTT “EDDIE” LAMPERT, <i>et al.</i> , Defendants.	Adv. Pro. No. 19-8250 (RDD)

**DECLARATION OF JOSHUA E ROBERTS IN SUPPORT OF
DEFENDANT CASCADE INVESTMENT, LLC’S MOTION TO DISMISS**

Joshua E. Roberts hereby declares as follows:

1. I am duly admitted to practice law in the state of New York and in the courts of the Southern District of New York.
2. I am an attorney at the law firm of Debevoise & Plimpton, LLP, counsel for Defendant Cascade Investment, LLC (“Cascade”). I submit this Declaration in support of Cascade’s Motion to Dismiss, filed concurrently herewith.
3. Attached to this Declaration as Exhibit 1 is a true and correct copy of an excerpted version of the First Amended Complaint, filed by Sears Holdings Corporation, *et al.*, dated as of November 25, 2019.
4. Attached to this Declaration as Exhibit 2 is a true and correct copy of the Loan Agreement, dated as of April 8, 2016, by and among Sears, Roebuck and Co., Sears

Development Co., Innovel Solutions, Inc., Big Beaver of Florida Development, LLC, Kmart Corporation, JPP, LLC, JPP II, LLC, and Cascade (the “2016 Secured Loan Facility”).

5. Attached to this Declaration as Exhibit 3 is a true and correct copy of Promissory Note A-2, dated as of April 8, 2016, by and among Sears, Roebuck and Co., Sears Development Co., Innovel Solutions, Inc., Big Beaver of Florida Development, LLC, and Kmart Corporation.

6. Attached to this Declaration as Exhibits 4A–4V are true and correct copies of mortgages or deeds of trust for each of the 21 real properties used as collateral in the 2016 Secured Loan Facility, as follows:

- A. Deed of Trust, dated as of April 8, 2016 by Sears, Roebuck and Co., for certain parcels of land situated in Los Angeles County, California;
- B. Deed of Trust, dated as of April 8, 2016 by Sears, Roebuck and Co., for certain parcels of land situated in Orange County, California;
- C. Deed of Trust, dated as of April 8, 2016 by Innovel Solutions, Inc., and Sears, Roebuck and Co., for certain parcels of land situated Kern County, California;
- D. Amended and Restated Deed of Trust, dated as of May 17, 2016 by Sears Development Co., for certain parcels of land situated in Los Angeles County, California;
- E. Deed of Trust, dated as of April 8, 2016 by Sears Development Co., for certain parcels of land situated in Los Angeles County, California;
- F. Deed of Trust, dated as of April 8, 2016 by Sears, Roebuck and Co., for certain parcels of land situated in Los Angeles County, California;
- G. Deed of Trust, dated as of April 8, 2016 by Innovel Solutions, Inc., for certain parcels of land situated in San Diego County, California;

- H. Deed of Trust, dated as of April 8, 2016 by Kmart Corporation, for certain parcels of land situated in San Diego County, California;
- I. Deed of Trust, dated as of April 8, 2016 by Innovel Solutions, Inc., for certain parcels of land situated in Orange County, California;
- J. Mortgage, dated as of April 8, 2016 by Innovel Solutions, Inc., for certain parcels of land situated in Duval County, Florida;
- K. Mortgage, dated as of April 8, 2016 by Big Beaver of Florida Development, LLC, and Kmart Corporation, for certain parcels of land situated in Marion County, Florida;
- L. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in Clay County, Florida;
- M. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in Orange County, Florida;
- N. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in Broward County, Florida;
- O. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in Pinellas County, Florida;
- P. Mortgage, dated as of April 8, 2016 by Kmart Corporation, for certain parcels of land situated in Kankakee County, Illinois;
- Q. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in Kent County, Michigan;
- R. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in Suffolk County, New York;

- S. Mortgage, dated as of April 8, 2016 by Innovel Solutions, Inc., for certain parcels of land situated in Luzerne County, Pennsylvania;
 - T. Mortgage, dated as of April 8, 2016 by Sears Roebuck and Co., for certain parcels of land situated in the Montgomery County, Pennsylvania;
 - U. Deed of Trust, dated as of April 8, 2016 by Sears, Roebuck and Co. and Innovel Solutions, Inc., for certain parcels of land situated in Dallas County, Texas; and
 - V. Deed of Trust, dated as of April 8, 2016 by Sears, Roebuck and Co., for certain parcels of land situated in Loudoun County, Virginia.
7. Attached to this Declaration as Exhibits 5A–5E are true and correct copies of UCC-1 Financing Statements filed for each of the borrowers under the 2016 Secured Loan Facility, as follows:
- A. UCC-1 Financing Statement and Addendum, between Sears, Roebuck and Co., JPP, LLC and JPP II, LLC;
 - B. UCC-1 Financing Statement and Addendum, between Sears Development Co., JPP, LLC and JPP II, LLC;
 - C. UCC-1 Financing Statement and Addendum, between Kmart Corporation, JPP, LLC and JPP II, LLC;
 - D. UCC-1 Financing Statement and Addendum, between Innovel Solutions, Inc., JPP, LLC and JPP II, LLC; and
 - E. UCC-1 Financing Statement and Addendum, between Big Beaver of Florida Development, LLC, JPP, LLC and JPP II, LLC.

8. Attached to this Declaration as Exhibit 6 is a true and correct copy of a Form 10-Q that Sears Holdings Corporation, filed with the Securities and Exchange Commission on May 26, 2016.

9. Attached to this Declaration as Exhibit 7 is a true and correct copy of the Assignment and Acceptance Agreement dated May 2, 2016, by and among Sears, Roebuck and Co., Sears Development Co., Innovel Solutions, Inc., Big Beaver of Florida Development, LLC, Kmart Corporation, JPP, LLC, JPP II, LLC, Cascade, and Petrus Yield Opportunity Fund, LP.

10. Attached to this Declaration as Exhibit 8 is a true and correct copy of the Assignment and Acceptance Agreement dated June 6, 2016, by and among Sears, Roebuck and Co., Sears Development Co., Innovel Solutions, Inc., Big Beaver of Florida Development, LLC, Kmart Corporation, JPP, LLC, JPP II, LLC, Cascade, and Rimrock High Income Plus (Master) Fund, Ltd.

11. Attached to this Declaration as Exhibit 9 is a true and correct copy of Assignment and Acceptance Agreement dated June 6, 2016, by and among Sears, Roebuck and Co., Sears Development Co., Innovel Solutions, Inc., Big Beaver of Florida Development, LLC, Kmart Corporation, JPP, LLC, JPP II, LLC, Cascade, and Rimrock Low Volatility (Master) Fund, Ltd.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: New York, New York
February 21, 2020

/s/ Joshua E. Roberts
Joshua E. Roberts